

ALABAMA DEPARTMENT OF REVENUE

REVENUE RULING 2017-002

This document may not be used or cited as precedent. Code of Alabama 1975, §40-2A-5(a).

TO: REQUESTOR

FROM: Vernon Barnett
Commissioner of Revenue

DATE: July 14, 2017

FACTS¹

REQUESTOR has a contract to purchase multiple aircraft manufactured by COMPANY A in COUNTRY. That contract provides that the purchase transactions are to be completed with delivery made to REQUESTOR or the designee of REQUESTOR in CITY, COUNTRY or CITY, COUNTRY. The aircraft would then be transported to an airport destination serviced by REQUESTOR for its first use in interstate commerce. REQUESTOR services no airports in Alabama. No sales tax or lease tax would be due on those transactions. However, REQUESTOR and COMPANY A are contemplating modifying the contract to provide for the aircraft to be manufactured at the CITY, Alabama manufacturing facility of COMPANY B (a subsidiary of COMPANY A) and the closings and deliveries of those aircraft to be had in CITY, Alabama if the transaction is likewise not subject to Alabama sales tax and Alabama lease tax. Accomplishing the closing and delivery in Alabama under such circumstances could save both companies from

¹ The facts upon which this revenue ruling is based are stated herein. To the extent that any relevant facts asserted by the requestor were omitted or were misstated or if stated, were misleading, this revenue ruling may be invalidated by the Department in whole or in part or withdrawn as the circumstances may require.

the inconvenience and distance related expenses of completing the transactions in CITY, COUNTRY or CITY, COUNTRY.

Specifically, REQUESTOR plans to make the aircraft acquisitions primarily through a lease oriented transaction structure utilizing a third-party leasing company (“Lease Co.” – see footnote 2 below) and to a lesser extent, purchase the aircraft directly from COMPANY B and finance them through conventional debt financing. REQUESTOR contemplates the lease oriented transaction to use two types of transactions. The first type of transaction involves the typical sale and leaseback type arrangement while the second type transaction is an arrangement where REQUESTOR assigns its aircraft delivery position to Lease Co. and COMPANY B then sells the aircraft directly to Lease Co.² who would in turn would lease the aircraft to REQUESTOR.

If COMPANY B sells the aircraft directly to REQUESTOR, REQUESTOR might acquire the aircraft in a debt-financed transaction or, more likely, engage in a sale and leaseback transaction with Lease Co. The typical sale and leaseback transaction would be in three steps:

- a. REQUESTOR will purchase the aircraft manufactured in Alabama by COMPANY B;
- b. REQUESTOR will immediately sell the aircraft to Lease Co.; and
- c. REQUESTOR will then immediately lease the aircraft back from lease Co. while the aircraft is still in Alabama.

While COMPANY B would execute its side of the purchase closing documents, including the bill of sale, in Alabama, REQUESTOR will sign most of its side of the purchase closing documents outside of Alabama. REQUESTOR would sign the aircraft delivery receipts in Alabama. In that circumstance, REQUESTOR would likely have a person acting under a power of attorney signing the delivery receipts on its behalf in Alabama.

If COMPANY B sells the aircraft directly to Lease Co. under an existing purchase agreement between COMPANY B and REQUESTOR, REQUESTOR will assign its aircraft delivery position and right of purchase to lease Co. This transaction would be in two steps:

- a. Lease Co. will purchase aircraft manufactured in Alabama by COMPANY B, and
- b. Lease Co will immediately lease the aircraft to REQUESTOR while the aircraft is still in Alabama.

² The Lease Co. might take title to the aircraft in its own name in these transactions, however, it would be expected that typically the Lease Co. would use a trust structure to take ownership. In such case, a U.S. Bank or trust company would be the trustee of the trust. As used herein, “Lease Co.” will mean collectively and individually, as applicable, the leasing company, its lender(s), the trust, its trustee and the beneficial owner(s) of the trust. The beneficial owner(s) of the trust may be one or more U.S. and/or foreign entities. In some cases, Lease Co may own and lease to REQUESTOR only one aircraft. In other cases, Lease Co. may own and lease a number of different aircraft which may be leased to REQUESTOR, or may be leased to REQUESTOR as well as other entities.

Regardless of whether COMPANY B sells the aircraft to REQUESTOR or to Lease Co. under one of these lease oriented transactions, REQUESTOR will wind up leasing the aircraft from Lease Co. while the aircraft is located in Alabama.

Under the lease oriented transactions described above, the lease terms are expected to be for 12 years or less. Lease Co. will retain title and possession of the aircraft after the lease term. The lease term is expected to be shorter than the useful life of the aircraft. Other than the purchase and lease of aircraft, REQUESTOR does not have significant operations in Alabama. It is contemplated that immediately following the closing, REQUESTOR will fly the aircraft, with no passengers or cargo, to a point outside of Alabama. The aircraft will then be put into regular passenger service as part of the REQUESTOR fleet of aircraft. Once the aircraft leaves Alabama, it is likely that the aircraft will never land³ in Alabama again during the duration of the lease except for repairs/maintenance at COMPANY B or other third-party facilities in Alabama.

As an alternative to leasing the aircraft from Lease Co., REQUESTOR may finance the aircraft purchase in a debt-financed transaction. When REQUESTOR purchases the aircraft in this manner, a third party financing company would place a chattel mortgage on the aircraft at the time of the sale. In this type transaction, COMPANY B would execute its side of the purchase closing documents, including the bill of sale, in Alabama. REQUESTOR would sign most of the purchase closing and mortgage documents outside of Alabama and the delivery receipt would be signed by REQUESTOR in Alabama. Just like with the lease oriented transactions described above, the aircraft would be removed from Alabama following the closing for its first use in commerce. The aircraft when it leaves Alabama will have no paying passengers or cargo.

In all of the three types of purchase transactions described above, REQUESTOR will purchase buyer furnished equipment (“BFEs”) to be shipped to the COMPANY B manufacturing facility to be installed into the aircraft prior to delivery. BFEs typically include items such as seats, galley equipment, avionics, track lighting and life rafts that may or may not have markings on them specific to REQUESTOR airlines. Although REQUESTOR will place the BFEs in the possession of COMPANY B for installation into the aircrafts it is acquiring, REQUESTOR will always retain title and ownership of the BFEs prior to the closing. If the acquisition is a lease oriented transaction, REQUESTOR will sell the BFEs to Lease Co. simultaneously with the sale of the aircraft. In that case, REQUESTOR will execute a separate bill of sale to Lease Co. for the BFEs items. If the aircraft is acquired in a debt-financed acquisition directly by REQUESTOR, the BFEs would essentially just be returned to the owner and then subjected to the chattel mortgage together with the aircraft. No additional transfer would occur and no separate bill of sale would be prepared for the BFE.

REQUESTED REVENUE RULING QUESTIONS

³ REQUESTOR currently has no hub in Alabama and does not offer flights into or out of Alabama, although this may change in the future. It’s also possible an aircraft may need to return to Alabama from time to time for an occasional emergency landing or charter flight.

Under the facts as stated above:

1. Is REQUESTOR's providing of BFEs to COMPANY B in Alabama exempt from Alabama sales and use tax?
2. Is Lease Co.'s purchase of BFEs from REQUESTOR under a sale and leaseback transaction closed in Alabama exempt from Alabama sales and use tax?
3. Is the sale of aircraft from COMPANY B to REQUESTOR or Lease Co. in Alabama exempt from Alabama sales and use tax?
4. If COMPANY B sells aircraft to REQUESTOR in Alabama, and REQUESTOR subsequently sells the aircraft to Lease Co. in Alabama as part of a sale and leaseback transaction, is the sale from REQUESTOR to the third party leasing company in Alabama exempt from Alabama sales and use tax?
5. Are the lease payments from REQUESTOR to Lease Co. subject to the Alabama lease tax?⁴
6. Aircraft will probably return to Alabama from time to time for periodic repairs and maintenance at either the COMPANY B facility or other aircraft repair and maintenance facilities in Alabama. Will bringing the aircraft back into Alabama under these circumstances make the aircraft acquisition subject to Alabama sales and use tax or the lease payments subject to Alabama's lease tax?
7. REQUESTOR owned or leased aircraft may need to make an emergency landing in Alabama while in route to another state. Does making an emergency landing in Alabama make the aircraft acquisition subject to Alabama sales and use tax or the lease payments subject to Alabama's lease tax?
8. A third party may charter a special flight that has rare stop in a city in Alabama. Does having a rare stop in Alabama on a charter flight make the aircraft acquisition subject to Alabama sales and use tax or the lease payments subject to Alabama's lease tax?

⁴ The revenue ruling requests divide this issue into three questions: (1) When REQUESTOR leases aircraft from Lease Co., is Lease Co. "engaged in the business of leasing" within Alabama? (2) If Lease Co. is engaged in the business of leasing within Alabama, does Alabama exempt the REQUESTOR-Lease Co. lease from Alabama's lease tax? and (3) if the Alabama lease tax applies to the REQUESTOR-lease Co. operating leases, does the Alabama lease tax apply for all payments during the life of the lease? Under the circumstances, the answer given to this Revenue Ruling Question should suffice.

9. REQUESTOR may decide to expand its routes into Alabama at some point in the future. Assuming that REQUESTOR would still not have sufficient flights into Alabama to be considered a hub operation, will this make the aircraft acquisition subject to Alabama sales and use tax or the lease payments subject to Alabama's lease tax?
10. REQUESTOR may fly over Alabama in route between destinations outside of Alabama. Does flying over Alabama make the aircraft acquisition subject to Alabama sales and use tax or the lease payments subject to Alabama's lease tax?

REVENUE RULINGS

Under the facts as presented:

1. REQUESTOR's providing of BFEs to COMPANY B in Alabama is exempt from Alabama sales and use tax.
2. Lease Co.'s purchase of BFEs from REQUESTOR under a sale and leaseback transaction closed in Alabama is exempt from Alabama sales and use tax.
3. The sale of aircraft from COMPANY B to REQUESTOR or Lease Co. in Alabama is exempt from Alabama sales and use tax under Ala. Code §40-23-4(a)(37).
4. If COMPANY B sells aircraft to REQUESTOR in Alabama, and REQUESTOR subsequently sells the aircraft to Lease Co. in Alabama as part of a sale and leaseback transaction, the simultaneous sale from REQUESTOR to the third party leasing company in Alabama is exempt from Alabama sales and use tax under Ala. Code §40-23-4(a)(37).
5. The lease payments from REQUESTOR to Lease Co. are not subject to the Alabama lease tax pursuant to Ala. Admin. Code r. 810-6-5-.09(7).
6. Aircraft will probably return to Alabama for periodic repairs and maintenance at either the COMPANY B facility or other aircraft repair and maintenance facilities in Alabama. Bringing the aircraft back into Alabama under these circumstances will not make the aircraft or BFE acquisition subject to Alabama sales and use tax or the lease payments subject to Alabama's lease tax. However, the retail cost of replacement parts, components and systems installed could be fully or partially exempted from Alabama sales and use tax and/or local sales and use tax as set forth in Ala. Code §40-23-4(48), the provisions of are scheduled to expire on May 30, 2022.

7. REQUESTOR owned or leased aircraft may need to make an emergency landing in Alabama while in route to another state. Making an emergency landing in Alabama by itself will not make the aircraft or BFE acquisition subject to Alabama sales and use tax or the lease payments subject to Alabama's lease tax.
8. A third party may charter a special flight that has a rare stop in a city in Alabama. Having a rare stop in Alabama on a charter flight does not make the aircraft or BFE acquisition subject to Alabama sales and use tax or the lease payments subject to Alabama's lease tax.
9. REQUESTOR may decide to expand its routes into Alabama at some point in the future. Assuming that REQUESTOR would still not have sufficient flights into Alabama to be considered a hub operation, this expansion will not make the aircraft or BFE acquisition subject to Alabama sales and use tax or the lease payments subject to Alabama's lease tax.
10. REQUESTOR may fly over Alabama in route between destinations outside of Alabama. Flying over Alabama will not make the aircraft or BFE acquisition subject to Alabama sales and use tax or the lease payments subject to Alabama's lease tax.

CONCLUSION

The Commissioner of the Department of Revenue grants in part the Taxpayer's requested rulings as set forth above.

Vernon Barnett
Commissioner of Revenue